

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

IN THE MATTER OF the *Judicial Review
Procedure Act*, R.S.O. 1990, c.J.1, as amended;

AND IN THE MATTER OF the *Public Hospitals
Act*, R.S.O. 1990, c.P.40, as amended

B E T W E E N:

**ONTARIO COUNCIL OF HOSPITAL UNIONS,
ONTARIO HEALTH COALITION and
ONTARIO PUBLIC SERVICE EMPLOYEES UNION**

Applicants

- and -

**TONY CLEMENT, MINISTER OF HEALTH AND
LONG-TERM CARE FOR THE PROVINCE OF ONTARIO and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Respondents

APPLICANTS' MOTION RECORD

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Court File No. 586/03

ONTARIO
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NOTICE OF MOTION

THE APPLICANTS will make a Motion to a Judge on Monday September 29, 2003 at 10:00 a.m., or as soon after that time as the matter can be heard, at Osgoode Hall, 130 Queen Street West, Toronto.

PROPOSED METHOD OF HEARING

The Motion is to be heard: Orally

THE MOTION IS FOR:

1. an Order staying any approval or taking any further action by the Minister of Health or any of his delegates of any plans by the William Osler Health Centre or the Royal Ottawa Health Care group to permit for-profit corporations to design, build, finance, lease/own, maintain, operate, manage and use a hospital facility pending the determination of the within application for judicial review;
2. An Order requiring the Minister or his delegates to revoke any approvals he may have granted with respect to any plans by the William Osler Health Centre or the Royal Ottawa Health Care group to permit for-profit corporations to design, build, finance, lease/own, maintain, operate, manage and use a hospital facility pending the determination of the within application for judicial review;
3. An Order abridging the time for bringing the motion;
4. the Applicants' cost of this motion on a substantial indemnity basis;
5. such further and other relief as may be required and the Court deem to be appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants have made out a serious issue to be tried;
2. The Minister has signified an intention to approve and fund the design, construction, and project financing of a hospital, and the provision of building maintenance, laundry, materials management, housekeeping, portering, food services and

security services in a hospital by for-profit private corporations for the William Osler Health Centre and, and the Royal Ottawa Health Care Group. (the " P3 schemes"). This will entail the ownership of the premises of public hospitals, and the operation of public hospital functions, by for-profit private corporations;

3. It appears that, in the case of both the Royal Ottawa Health Care Group and the William Osler Health Centre, contracts have been entered into and approval by the Minister or his designate is imminent or pending;
4. The *Public Hospitals Act* and its regulations vest the authority to govern and manage a public hospital under the *Act* in a board of directors constituted pursuant to the provisions of the *Act*; and require the board to manage and monitor activities in the hospital to ensure compliance with the *Act* and regulations, and to take such measures as the board considers necessary to ensure compliance. The P3 schemes involve the carrying out of specified functions of a public hospital by the for profit private corporation which is not an entity governed or managed by the board of the public hospital;
5. The *Act* and the regulations vest the direct and actual superintendence and charge of a public hospital in the administrator of the hospital. The P3 schemes involve the carrying out of functions of the administrator by the for profit private corporation;
6. The P3 scheme will make significant operations (including non-clinical services) of the public hospital subject to the control and governance of the for profit private corporation, and some subject to the control and governance of the public hospital. However, the *Act* and regulations contemplate a single board having governance and management of all of the functions of a public hospital, and a single administrator having superintendence and charge of the hospital;

7. The *Act* requires that a public hospital be a corporation without share capital incorporated under the *Corporations Act*. Any purported approval of the P3 would permit a for-profit corporation to operate the functions of a public hospital and the administrator of a public hospital;
8. Section 6 of the *Act* requires the board to carry out the directions of the Minister, and confers on the board the unrestricted power to carry out such directions. Any purported approval of the P3 would interfere with the ability of the Minister to make effective directions, and would limit the capacity of the board to carry out the Minister's direction, and would restrict the power of the board to carry out the directions;
9. Under s. 9 of the *Act*, where the public interest so requires, the Lieutenant Governor in Council may appoint a supervisor to assume control of the powers of the board, the administrator of the hospital, the corporation and its officers and members. Since a supervisor cannot assume the powers of the for profit private corporation under the *Act*, the P3 scheme frustrates the purposes and objects of the statute regarding the appointment of a supervisor;
10. The regulations require the board of a public hospital to establish and provide for the operation of an occupational health and safety program for the hospital, and the operation of a health surveillance program, including a communicable disease surveillance program in respect of all persons carrying on activities in the hospital. The P3 schemes will entail certain hospital functions being subject to the control and governance of the for profit private corporation. Any purported approval of such a scheme is inconsistent with these regulations;

11. The regulations require the board of a public hospital to establish a fiscal advisory committee which shall make recommendations to the board with respect to the operation, use and staffing of the hospital. As the P3 schemes will entail the private partner making decisions respecting hospital operations, usage and staffing, the scheme is necessarily inconsistent with the regulations;
12. In approving the P3 schemes, the Minister fetters his discretion with respect to the granting of approvals under s. 4; the making of financial payments or the imposition of terms and conditions on such payments or the termination of such payments under s. 5; and making of directions pursuant to s. 6 of the Act and s. 22.1 of the Hospital Management Regulation;
13. The Act (s. 11) vests the power to expropriate any real property necessary for the purpose of properly conducting the hospital in the board of the hospital. The P3 schemes will prevent the public hospital from exercising this power with respect to the lands and premises owned by the for profit private corporation;
14. In purporting to approve the P3 schemes under s.4, or funding under s. 5 of the Act, the Minister has exceeded his authority, failed to act in accordance with the requirements of the Act and regulations, and exercised his discretion in a manner which is inconsistent with objects and purposes of the Act and the regulations;
15. Irreparable harm will result if a stay is not granted;
16. A provincial election campaign is currently underway and two of the three major political parties have signified their opposition to the P3 schemes. In light of the fact that the contracts the Minister intends to approve include provisions imposing

significant financial penalties if the contracts are revoked, approval now may make the P3 scheme irreversible by a future government for a significant period of time, notwithstanding its opposition to the scheme. Further, the proponents of the P3 schemes have said that the cancellation of the schemes will expose public hospitals in Ontario to significant financial penalties. Such financial penalties would inevitably be borne by the taxpayers of Ontario.

17. The P3 schemes, if implemented, would constitute a fundamental change in the manner in which public hospitals are owned, operated, managed and governed in the province of Ontario, and would involve a significant reduction in public ownership and control of public hospitals, and any future Minister's ability to control and supervise public hospitals.
18. The balance of convenience favours the granting of a stay. *Inter alia*, if a stay is not granted, and the application for judicial review is successful, the success may be nugatory as the P3 scheme may be irreversible. On the other hand, if a stay is granted, but the application for judicial review is unsuccessful, it will cause only a short delay before approvals may be given;
19. Section 4 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, as amended;
20. Rule 3.02 of the Rules of Civil Procedure;
21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THIS MOTION:

1. The Record filed in the application for judicial review;
2. The Affidavit of Cathy Lace, to be sworn;
3. Such further and other material as counsel may advise and the Court permit.

September 29, 2003



C. Michael Mitchell

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Solicitors for the Applicants/Moving Parties

ONTARIO COUNCIL OF HOSPITAL UNIONS et al

v.

TONY CLEMENT, MINISTER OF HEALTH AND LONG-TERM CARE FOR THE PROVINCE OF ONTARIO et al

Court file no. 586/03

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Proceeding commenced at TORONTO

NOTICE OF MOTION

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ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

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- and -

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Respondents

AFFIDAVIT OF CATHY LACE

I, Cathy Lace, of the City of Toronto, in the Province of Ontario, make oath and say:

1. I am a lawyer in the law firm of Sack Goldblatt Mitchell, counsel for the applicants in these proceedings, and as such have knowledge of the matters hereinafter deposed to, except where the matters are stated to be on information and belief, in which case I verily believe them to be true.
2. On September 21, 2003, the applicants commenced an application for judicial review seeking an order, *inter alia*, quashing and prohibiting any approvals granted by the Minister of Health and Long-Term Care pursuant to the *Public Hospitals Act*

of any plans by the William Osler Health Centre (WOHC) and the Royal Ottawa Health Care Group (ROHCG) to permit for-profit private corporations to design, build, finance, lease/own, maintain, operate, manage and use a hospital facility (the "P3 schemes"), and prohibiting the Minister from making any payment pursuant to s.5 of the Act with respect to the P3 schemes. The application, and the supporting affidavits of Michael Hurley and Natalie Mehra, are contained in the record on the application for judicial review that has been served on the applicants and filed with the courts.

3. According to a report on the *Toronto Star* website dated Friday, September 26, 2003, the board of the ROHCG approved the "commercial close" of a \$100 million public-private deal on the evening of September 25, 2003. According to the same report, a spokesperson for the hospital, Kathryn Hendricks, said that "the next step is called 'financial close' and that will happen over the next couple of days." Attached to this affidavit and marked as Exhibit 1 is a printout of the report on the *Toronto Star* website which I accessed on September 26, 2003.
4. According to a report in *The Globe and Mail* dated September 26, 2003, Premier Eves said on September 25 that the ROHCG deal must still be approved by the Ministry of Health. Attached to this affidavit and marked as Exhibit 2 is a copy of the article in *The Globe and Mail*.
5. I am advised by Steven Shrybman, also a lawyer with the firm of Sack Goldblatt Mitchell, and verily believe to be true, that in an interview aired on the program "Ottawa Morning" on CBC Radio on the morning of September 26, 2003, George Langill, Chief Executive Officer of the ROHCG, stated in part:

"And now we have reached a point where we have reached an agreement with the consortium to provide us with a facility. What we need to complete that deal is the endorsement of the Government of Ontario to proceed with it and that is what we are waiting for..."

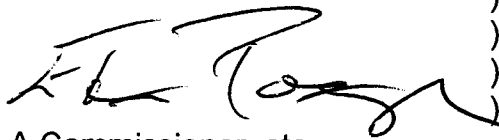
In fact right now in signing these agreements we have been in a parallel process with them [the Ministry of Health], and we are asking them now to complete the process and endorse the agreements."

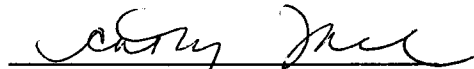
6. On September 26, 2003, as a result of these media reports, counsel for the applicants wrote to the Honourable Tony Clement, Minister of Health and Long-Term Care, advising that any approval of the P3 scheme would be unlawful, and indicating that the applicants intended to apply to the Courts for interim relief unless the Minister made an undertaking immediately that neither he nor his delegates would approve any arrangements in relation to the P3 schemes pending disposition of the matter by the Courts. Attached to this affidavit and marked as Exhibit 3 is a copy of the letter. I am advised by Steven Barrett, another lawyer in our firm, that he spoke to Ms. Leslie McIntosh, counsel for the Minister, on September 26, and

- she advised him that she had no instructions in response to the applicants' request for an undertaking. To the best of my knowledge, we have received no further communications from counsel for the Minister since that conversation.
7. The Provincial election campaign is currently underway, and the election has been set for October 2, 2003. According to the website of canada.com, the leaders of two of the three major political parties campaigning for office in this election, Dalton McGuinty of the Liberal Party of Ontario and Howard Hampton of the New Democratic Party of Ontario, are on record as opposing these P3 schemes, and have called on the current government to refrain from granting any approvals to these schemes during the election campaign. Attached to this affidavit and marked as Exhibit 4 is a printout of the report on the website of canada.com which I accessed on September 26, 2003.
 8. As can be seen from the application for judicial review itself, and the affidavits already filed in these proceedings in the Applicants' Record, it is the position of the applicants that the P3 schemes, if implemented, would constitute a fundamental change in the manner in which public hospitals are owned, operated, managed and governed in the province of Ontario. In addition, it is the position of the applicants that the P3 schemes would involve a significant reduction in public ownership and control of public hospitals, and the Minister's ability to control and supervise public hospitals.
 9. To the best of my knowledge the documentation regarding the P3 schemes has not been made available publicly. However, it appears from various media reports, including the reports of the comments of ROHCG CEO, Mr. Langill (see, for example, **Applicants' Application Record** filed in the main application, *Affidavit of Michael Hurley, Exhibit H*, at p. 184), that there will be significant penalties incurred in the event that the P3 schemes are cancelled. Such penalty payments may be claimed even if the schemes are subsequently found by the Courts to be unlawful, thereby burdening the hospitals, and ultimately the taxpayers of Ontario.
 10. In addition, it appears that the P3 schemes involve long term leases and servicing agreements between the private consortium and the hospitals. In particular,
 - The arrangements apparently contemplated in the P3 scheme involving the private consortium and the ROHCG will include leases to the hospital from the consortium of 20 to 66 years in duration: see **Applicants' Application Record** filed in the main application, *Affidavit of Michael Hurley, Exhibit H* at p. 187.
 - The arrangements apparently contemplated in the P3 scheme involving the private consortium and the WOHC will include a lease to the hospital from the consortium of 28 years in duration: see **Applicants' Application Record** filed in the main application, *Affidavit of Michael Hurley, Exhibit G*, at p. 181.

11. According to the media reports, further approvals are required from the Ministry in order to complete the legal and financial arrangements for the P3 schemes. If the Minister or his delegates grant any further approvals, the P3 schemes in practical terms may be irreversible for considerable periods of time because of the quantum of the penalties as asserted in the media reports. Indeed, in this respect, according to the CBC website as of September 26, 2003, the leader of the Liberal Party, Mr. McGuinty, has indicated that despite his opposition to the P3 schemes, a Liberal government would not pay multi-million dollar penalties to get out of contracts with private consortia to build public hospitals. Attached to this affidavit, and marked as Exhibit 5 is a printout of the report in this regard on the CBC website which I accessed on September 26, 2003.

Sworn Before Me at the City of Toronto,)
in the Province of Ontario, this 29th day)
of September, 2003.)


A Commissioner, etc.


CATHY LACE

TORONTO STAR

www.thestar.com

Fri. Sep. 26, 2003. | Updated at 09:42 AM

This is Exhibit... referred to in the affidavit of... Cathy Lacey... sworn before me, this... 29th... day of... September... 2003.

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Navigation and search bars with buttons for "Home", "GTA", "Business", "Waymoresports", "A&E", "Life". Includes search input fields and "More search options" link.

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Print Story

E-mail Story

Sep. 26, 2003. 01:00 AM

McGuinty slams hospital contract

Ottawa P-3 deal close to being finalized

Eves defends policy and negotiations

RICHARD BRENNAN
QUEEN'S PARK BUREAU

Kitchener—A proposal for a privately built hospital sparked controversy on the campaign trail yesterday with Liberal Leader Dalton McGuinty urging Premier Ernie Eves to cancel the project.

"I'm calling on Mr. Eves to halt any contract signing when it comes to P-3 (private-public partnerships) in the province of Ontario. I stand against the Americanization of our hospitals," McGuinty said.

"Mr. Eves does not have a mandate. He never received that mandate at the time of the last election, he shouldn't be doing this secret deal under cover of a provincial election campaign. The responsible thing for him is to set all of those things aside and wait until this election has been completed," he told reporters.

The \$100 million public-private hospital deal for the Royal Ottawa Hospital received "commercial close" approval by the board of directors in a meeting last night, effectively sealing the deal with the approval of the Conservative government.

McGuinty, who enjoys a healthy lead in public opinion polls in advance of Thursday's election, is opposed to the P-3 hospital scheme introduced by the Tories, as is NDP Leader Howard Hampton.

The inked deal could prove highly problematic to undo if the Liberals form the next government. There are P-3 hospitals — hospitals built and maintained with private money — planned for Brampton, Ottawa and Markham. While a contract has been signed for Brampton the other two deals have not been inked yet. While technically these deals are signed between local hospital boards and private consortiums, it was the provincial government that approved the P-3 concept.

The Conservative government has been extremely secretive on the

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details of these deals.

Speaking to reporters yesterday, Eves defended the deal, saying that negotiations on the hospital are a matter for the civil service and he rejected the idea that major contracts should not be signed in the middle of an election campaign.

"The basic rule is that policy decision, major policy decisions, if the policy decision has already been made, giving effect to that policy decision, the government goes on and operates, the (civil service) operates as they normally would, as long as you have made the basic policy decision before the writ was dropped."

Royal Ottawa spokesperson Kathryn Hendrick said last night's signing off was the culmination of more than six months of negotiations with the private company that will build the 188-bed psychiatric hospital and lease the property back to the province.

She said the next step is called "financial close" and that will happen over the next couple of days. She said the board will not consider delaying its decision pending the outcome of the election.

Hendrick said for the Liberals and New Democrats to oppose the private hospital deal and label it the "Americanization" of medicare is not fair, adding that all services at the facility will be paid for by OHIP.

But McGuinty yesterday said that "P-3s represent an extraordinary departure from our history when it comes to public hospitals." He said he would not make an ironclad statement that he would get rid of the P-3 hospital since he's not sure what penalties are built into the contracts. "I'm not going to pay some ridiculous multi-million-dollar penalty in order to bring the hospitals back in" to the system.

NDP Leader Howard Hampton said yesterday that if he is elected he would immediately cancel the private-public partnership deal "at any cost."

"An NDP government would litigate this to the ends of the Earth," Hampton said.

"We would send a message to every other outfit like this: You're not welcome in Ontario. Hospitals in Ontario will be public, they will be not for profit, they'll be part of the medicare system."

With files from Caroline Mallan

 [Print Story](#)

 [E-mail Story](#)

This is Exhibit...²...referred to in the
affidavit of Cathy Lace
sworn before me, this 24th
day of September 2003
[Signature]
A COMMISSIONER, ETC.

The globe and mail
Friday, September 26, 2003

ONTARIO ELECTION · A7

Scrap hospital deal, McGuinty tells Eves

Premier has no mandate to let consortium build psychiatric facility, Grit Leader says

BY GLORIA GALLOWAY
KITCHENER, ONT.

Ontario Liberal Leader Dalton McGuinty has demanded that Conservative Leader Ernie Eves cancel a deal to allow a private consortium to build and manage a psychiatric hospital in Ottawa.

The deal, which is known as a P3 — a public-private partnership — for the new Royal Ottawa Hospital was to be signed last night despite Mr. McGuinty's insistence that it be scrapped.

"I'm calling on Mr. Eves to halt any contract signings when it comes to P3s in the province of Ontario," the Liberal Leader said yesterday during a campaign stop in Kitchener.

"I stand against the Americanization of our hospitals. Mr. Eves does not have a mandate. He never received that mandate at the time of the last election. He shouldn't be doing these secret deals under cover of a provincial election campaign."

Mr. Eves's cabinet agreed several weeks ago that the construction could proceed, and told the hospital's board to sign the final agreement with the Healthcare Consortium of Ontario.

A coalition of hospital workers' unions filed a court application on

Monday in an attempt to block the deal. Court documents submitted by the unions accuse Health Minister Tony Clement and the Ontario government of violating the Public Hospitals Act.

The Act gives authority to manage and govern public hospitals to a board of directors, the documents say, but Mr. Clement's deals with the William Osler Health Centre in Brampton and the Royal Ottawa Health Care Group would "entail the ownership of the premises of public hospitals, and the operation of public hospital functions, by for-profit private corporations."

The Conservative Leader said yesterday that the deal, which still must be approved by the Ministry of Health, is the result of a decision made before the election was called.

The deal for the 284-bed facility has been four years in the making and is worth between \$100-million and \$120-million.

George Langill, the CEO of the Royal Ottawa, said yesterday that he would sign the agreement because "we feel it's right to do what we had to do to get a new facility for this community."

The old Royal Ottawa Hospital, one of the province's leading psychiatric facilities, is "dysfunc-

tional, a disgrace to the community," Mr. Langill said. "This is long overdue. We have very strong support in our community. Our community deserves this."

But Mr. McGuinty, whose own riding is in Ottawa, said it was wrong to proceed with a controversial public-private partnership while the leadership of the province is being determined.

Mr. Eves's "responsibility as Premier is to do nothing more than pro-forma, routine matters during the course of the election campaign," Mr. McGuinty said. "P3s represent an extraordinary departure from our history when it comes to public hospitals in Ontario. He doesn't have the electoral right and he doesn't have the moral right to go ahead with those P3s..."

The Royal Ottawa is not the only P3 hospital being contemplated for the province. A similar deal has already been signed with the William Osler Health Centre in Brampton and there are negotiations for a third facility in Markham.

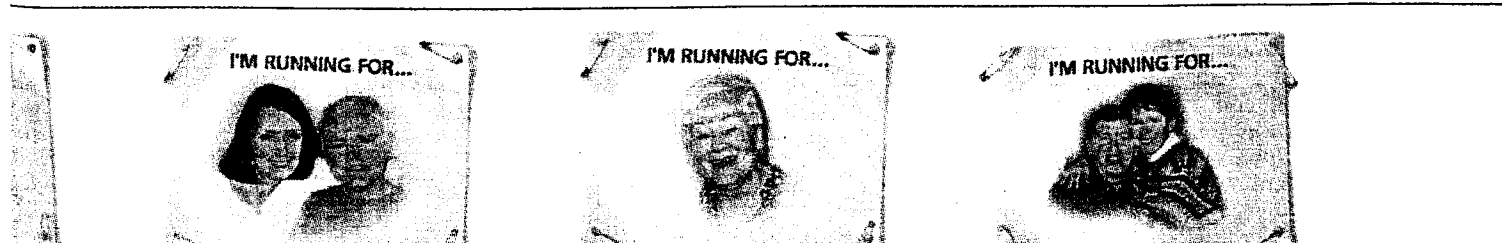
But Mr. McGuinty said that if he is elected, he will move to bring any privately owned hospitals back into the public system.

Some media reports have suggested the cancellation of the contract with the private consortium could cost as much as \$10-million.

With a report from Graeme Smith



DAVE CHIDLEY/LONDON FREE PRESS
The provincial government
'an Ottawa hospital. 'I
spitals,' he says.



Sack
Goldblatt
Mitchell

Barristers
& Solicitors

This is Exhibit 3 referred to in the
affidavit of Cathy Hase
sworn before me, this 24th
day of September 2003


A COMMISSIONER, ETC.

September 26, 2003

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OUR FILE No. 03-1471
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The Honourable Mr. Tony Clement
Minister of Health and Long-Term
Care for the Province of Ontario
c/o Ministry of Health and Long Term Care
10th Floor, 80 Grosvenor Street
Toronto, Ontario
M7A 2C4

Dear Minister Clement:

**Re: Application for Judicial review - Ontario Council of Hospital Unions,
Ontario Health Coalition and Ontario Public Service Employees Union,
Applicants and The Honourable Tony Clement and Her Majesty the Queen
in Right of Ontario, Respondents - Divisional Court File No. 586/03**

We act for the Ontario Council of Hospital Unions, Ontario Health Coalition and the Ontario Public Service Employees Union in the above-noted matter. In addition, we have now received instructions to act on behalf of the Service Employees International Union, and will be taking steps to have it added as an applicant.

As you know, our clients have launched an application to prohibit and, if necessary, quash and declare illegal, any approvals by the Minister of Health and Long-Term Care or his agents or representatives respecting contracts between the William Osler Health Centre and the Royal Ottawa Health Care Group and any third party regarding the privatization of the building and operation of those hospitals.

It has come to our attention through news reports that the Ministerial approvals that are the subject of this legal proceeding have been granted this week or are about to be granted before the Ontario election scheduled for October 2, 2003, and in the face of our application for judicial review. As is made plain in the application for judicial review, the position of the applicants is that the purported granting of any such approvals would be unlawful, and would constitute a fundamental violation of the Minister's authority under the *Public Hospitals Act* and regulations.

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CRIMINAL

20 Dundas St. West, Suite 1130, P.O. Box 180, Toronto, Ontario, M5G 2G8
Tel: (416) 977-6070 Fax: (416) 591-7333

Further, it is the position of our clients that for the Minister to grant such approvals during an election campaign would be contrary to legal and constitutional requirements and conventions. It is a well-established principle that once parliament is dissolved, and an election campaign has commenced, the government's freedom of decision-making is restricted to routine matters of administration; and that decision-making on matters involving controversy, matters which are not urgent, and matters which would unreasonably bind the decision-making of a future government, must be avoided. The approval of these schemes falls squarely within the category of conduct prohibited by the convention, and may recklessly and negligently expose public hospitals in Ontario to significant financial penalties which would inevitably be borne by the taxpayers of Ontario.

Given the existing election campaign, the public controversy surrounding these contracts, the stated position of the other political parties in opposition to the awarding of any such contracts, the court action initiated by our clients challenging the legal validity of the schemes and any approvals given by the Government, and the principles and conventions of our parliamentary democracy, it would be a serious breach of the law and our democratic norms for the Government or the Ministry to take any further action to approve or proceed with any element of these transactions or proposed transactions at this time. Accordingly, we urge you to immediately exercise all the powers you have under the *Public Hospitals Act* to direct the hospitals to cease and desist from any actions in furtherance of any such contracts or proposed contracts. In addition, the applicants request that you refrain from granting any approvals until after the election, and until after the Court have determined the lawfulness of the schemes. If you proceed, we reserve the right to take any necessary legal action, and claim any appropriate relief, including holding you as Minister, and any delegate authorized to grant such approval, personally accountable for any resulting damages.

We have instructions to immediately seek interim relief to restrain the granting of any approvals for the schemes at both Royal Ottawa and William Osler if we do not receive your immediate undertaking that no further action will be taken, and that you or your delegates will not approve or sign or take any other action in relation to these arrangements, pending disposition of this matter by the Courts. If you give such an undertaking, we are prepared to cooperate fully in scheduling an expedited hearing.

In order to proceed expeditiously with the resolution of this dispute by the Courts, we require the production forthwith of all documents in the possession of the Ministry relating to the proposals, contracts and approvals, including the requests for proposal, the responses to the requests for proposal, all correspondence and communications, written or electronic, between the Ministry and the hospitals and any third parties in connection with the said contracts, and all internal memoranda, analyses and communications regarding the matter. We require that this material be provided to us not later than September 30, 2003.

In order to expedite the proceedings, we are prepared to consider arrangements that will respect any confidentially issues arising from the disclosure of alleged confidential information, and urge you to have your legal counsel contact us to discuss any issues that arise in that regard.

Sincerely,



C. Michael Mitchell

CMM:ibr
opeiu 343
encl.

cc: The Honourable Ms. Janet Ecker
Ms. Dianne McDougall
Mr. Phil Hassen
Mr. David Lindsay
Mr. Howard Hampton
Mr. Dalton McGuinty
Mr. Tony Dean
Ms. Lori Sterling
Mr. Jack Coop
Ms. Leslie McIntosh
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Mr. Rick Blair
Ms. Leah Casselman
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After the debate, which party will get your vote?

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Eves has no authority to sign hospital deals now: McGuinty

Friday, September 26, 2003

THE LEADERS

ERNIE EVES - PC
Eves succeeded Mike Harris as premier in April, 2002. He has been a MPP since 1981, holding a number of positions, including Deputy Premier and Minister of Finance from 1995 to 2001.

DALTON MCGUINITY - LIB
McGuinty was elected Liberal leader in 1996, and has been an MPP since 1990. In 1999 McGuinty helped the Liberals capture 40 per cent of the popular vote and 35 seats.

HOWARD HAMPTON - NDP
Hampton was elected NDP leader in 1996. Hampton is also the NDP critic for Agriculture, Food and Rural Affairs, and has previously served as Minister of Natural Resources and Attorney General from 1990-1993.

KITCHENER, Ont. -- Premier Ernie Eves doesn't have the moral or electoral authority to proceed with "secret deals" allowing private consortiums to build publicly run hospitals, Dalton McGuinty said Thursday.

The Liberal leader demanded that Eves, whom polls suggest is trailing badly in the final push before the Oct. 2 election, forbid contracts for facilities such as the Royal Ottawa Hospital, one of several facilities the Conservatives had planned as so-called public-private partnerships, or P3s.

"I'm calling on Mr. Eves to halt any contract signings when it comes to P3 in the province of Ontario," McGuinty said. "Mr. Eves does not have a mandate. He shouldn't be doing these secret deals under the cover of a provincial election campaign."

Eves, who was in Toronto, said signing the deal in the middle of the election campaign does not violate provincial regulations.

"The policy decision had already been made" before the election campaign began Sept. 2, said Eves.

"It isn't done by a political person. It's done by the OPS, by the civil service," Eves said Thursday.

NDP Leader Howard Hampton said that, traditionally, such signings don't take place during an election campaign.

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SEPT

- ERNIE EVES**
- 12:00 p.m. Join Canadian and Er Constitution Hall
 - 2:00 p.m. Media Toronto Convent Toronto.
 - 3:00 p.m. Edito the National Post
 - 4:30 p.m. Inter Toronto.
 - 4:45 p.m. Inter National.
 - 7:00 p.m. Missi: at Novotel Missis

- DALTON MCGU**
- 8:15 a.m. Camp Place Hotel in To
 - 10:00 a.m. Edit at the Toronto S
 - 12:00 p.m. Edit at the Globe and
 - 2:45 p.m. Camp Vinnie's Café.
 - 6:30 p.m. Camp Italia.

- HOWARD HAMI**
- 8:30 a.m. Camp NDP Central carr

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"If Mr. Eves and his government were honourable they would have followed that convention," Hampton said Thursday.

"This is another very desperate measure by a government that knows it is going down so it is trying to reward corporate friends as much as possible before it goes down."

Hampton, who said he would cancel the deals, added that "an NDP government would litigate this to the ends of the earth."

The \$100-million, 188-bed hospital was to be built by the Healthcare Consortium of Ontario as part of an arrangement that would allow private interests to build and maintain the facility, leaving the hospital to rent the building from its owner.

The contract, which requires the approval of cabinet, was expected to be signed late Thursday.

"P3s represent an extraordinary departure from our history when it comes to public hospitals in the province of Ontario," McGuinty said. "He doesn't have the electoral right, and he doesn't have the moral right to go ahead with those P3s at this point in time."

There are plans for two other P3 hospitals in Ontario, one in Brampton and another in Markham.

McGuinty refused to speculate on how much it might cost a Liberal government to get out of the Royal Ottawa contract or any of the others that were being contemplated by the Tories.

Media reports Thursday had the cost of cancelling the Royal Ottawa contract at \$10 million.

During an early-morning stop at a campaign office in the tiny town of Renfrew, an hour's drive west of Ottawa, McGuinty shrugged off concerns about a shrinking federal surplus and whether Ottawa will be able to afford a promised \$771 million cash injection.

"There's all kinds of speculation about federal money these days; I don't believe that speculation," McGuinty said.

"I can tell you one thing: I will fight like hell to get our fair share of federal health-care funding."

Several costly crises are expected to deplete federal coffers, including the SARS outbreak in Ontario, rampant forest fires in British Columbia and the ongoing mad cow scare, and whether the \$2-billion injection Finance Minister John Manley promised in the last federal budget will come to pass.

Slower-than-expected economic growth, due in large part to those same emergencies, is also keeping the bottom line slimmer than expected.

But the federal fiscal situation hasn't discouraged McGuinty from promising to solve Ontario's growing shortage of doctors, and he repeated that pledge Thursday in Renfrew, a county that's short seven family physicians and home to 11,200 people who don't have one, according to Liberal numbers.

"We've got a crisis in family medicine in the province of Ontario," McGuinty said.

Family medicine is not the chosen specialty for most medical students who want to practise in Ontario because of a crushing patient load, hundreds of thousands of dollars of student debt and 60, 70, 80-hour work weeks."

McGuinty has promised that a Liberal government would expand medical school enrolment by 15 per cent, remove barriers to foreign-trained doctors and create 150 "family health teams" to provide front-line care.

At an evening campaign rally in St. Thomas, south of London, McGuinty's campaign caravan was greeted by a handful of local Conservative supporters denouncing the Liberal plan to cancel the Tory tax credit for parents who send their kids to private school.

Toronto.
9:00 a.m. Media Studio 2.
10:00 a.m. Med Radio in Toronto
2:15 p.m. Camp Victoria Park In I
7:00 p.m. Camp Hayes campaign



IMPORT

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ADVANCE POLL
 September 20-26
CANDIDATES D
 September 23
 6:30 p.m. to 8 p.
ELECTORS ADD:
 October 1
ELECTION DAY
 October 2
 9 a.m. to 8 p.m.



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Health, education
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 all the big issues.



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"I feel like we have to pay for our education twice," said Tami Taylor, 48, a working single mother whose son just finished Grade 8 at Faith Christian Academy in St. Thomas. Taylor said she got a modest credit of just over \$100.

"It wasn't an ocean of money, but it helped, you know? Especially on a budget."

Taylor said her decision to protest was more about principles of fairness than the money.

"I think this is an issue that's very real and should be considered, even if you disagree," she said. "Because I am paying twice."

While the protest was peaceful, a Tory supporter trailing the McGuinty campaign got into a shoving match with a Liberal handler who mistakenly thought he wasn't allowed inside. No one was injured in the altercation.

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This is Exhibit 3
affidavit of Cathy Lacey
sworn before me this 25th
day of September 2003

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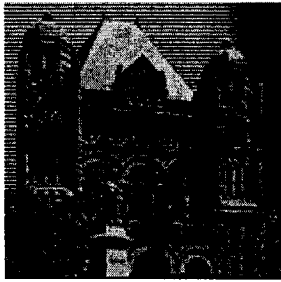


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Liberals won't stop P3 hospitals at taxpayers' expense

Web Posted | Sep 25 2003 04:16 PM EDT

OTTAWA — Liberal leader Dalton McGuinty said Thursday that he won't pay multi-million dollar penalties, and waste taxpayers' money, to get out of private contracts to build hospitals.

McGuinty's comments came just hours before the expected close on an agreement with a private consortium to finance, build and manage a \$95-million facility for the Royal Ottawa Hospital, according to hospital spokesperson Kathryn Hendrick.

The province has entered into a similar deal—referred to as a public-private partnership, or P3—in Brampton.

"If contracts have been entered into, and those contracts are binding, we will fold those P3 hospitals as quickly as we can into the public system, but in a way that doesn't compromise taxpayers," McGuinty said at a campaign stop in Renfrew.

"I'm not going to pay some ridiculous multi-million dollar penalty in order to bring the hospital back in."

- INDEPTH: [Critical Care](#)

McGuinty demanded that the details of those hospital deals should be made public.

If elected, the Tories would use this strategy to build more hospitals in the province.

The NDP has promised to stop private-public partnerships undertaken by the Tories to build hospitals.

The private consortium set to build the Royal Ottawa facility is called the Healthcare Infrastructure Company of Canada. It is comprised of Oxford Properties Group, Borealis Capital Corporation, Carillion Canada, Parkin Architects Limited, Adamson



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v.

TONY CLEMENT, MINISTER OF HEALTH AND LONG-TERM CARE FOR THE PROVINCE OF ONTARIO et al

Court file no. 586/03

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Proceeding commenced at TORONTO

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APPLICANTS' MOTION RECORD

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